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conviction, was again convicted of a felony. The court held that he must suffer the increased statutory penalty. *People* v. *Carlesi*, 139 N. Y. Supp. 309 (Sup. Ct., App. Div.). The opposite result seems to have been reached in all but one of the other jurisdictions where the question has arisen.[12] The reason for statutes providing increased punishment for second offenders is the greater criminality attaching to one who repeats an offense.[13] The New York court recognizes the continuing existence of a criminal taint in spite of the pardon. Since no discretion is allowed by the New York statute in imposing the increased penalty, injustice might result if the pardon were based on innocence.[14] It is submitted that the power to pardon should be broad enough completely to remove all taint of guilt. To have a lesser effect a pardon should be limited in terms.

TORT LIABILITY FOR BREACH OF CHILD-LABOR STATUTE. — The increasing number of child-labor laws in this country lends interest to a recent Alabama case under such a statute. A child employee was allowed to recover from the defendant employer damages for personal injuries although he obtained employment by falsely representing that he was above the statutory age. *De Soto Coal, Mining, & Development Co.* v. *Hill*, 60 So. 583 (Ala.). The statute in this case was peculiar in merely forbidding the employment of children under fourteen, without providing a penalty. Since the statute is not effective as a criminal statute, it seems that the legislature, in forbidding one class of persons to do affirmative acts affecting another, must have intended to create a civil liability to children employed.[1]

In determining the exact limits of a right of action given in such general terms, the purpose of the legislature must be examined in order to decide what type of civil liability it is intended to impose. It seems that liability should not be confined to cases where the plaintiff's youth is the cause of his injury,[2] since the purpose of such a statute is to protect children from all the dangers of the prohibited employment.[3] As a

[12] Edwards *v.* Commonwealth, 78 Va. 39; State *v.* Martin, 59 Oh. St. 212. See Commonwealth *v.* Morrow, 9 Phila. 583. *Contra*, Commonwealth *v.* Mount, 2 Duv. (Ky.) 93.

[13] See People *v.* Sickles, 156 N. Y. 541, 547; People *v.* Craig, 195 N. Y. 190, 88 N. E. 38.

[14] The only relief in such a situation, if the view of the New York court is adopted, would be a possible second act of grace in reducing the sentence.

[1] Where a statute provides only a penal liability for its breach, a civil right can scarcely be given by construction of the words. It seems rather that the courts in substance are creating a new cause of action because they recognize the policy which lies behind the criminal statute. See 26 HARV. L. REV. 531.

[2] There must always be causal connection between the act forbidden and the injury. See Queen *v.* Dayton Coal & Iron Co., 95 Tenn. 458, 464, 32 S. W. 460, 461; Inland Steel Co. *v.* Yedinak, 172 Ind. 423, 432, 87 N. E. 229, 233. But the employment of the child is legal cause of damage incidental to such work. Third Vein Coal Co. *v.* Dielie, 110 Ill. App. 684; Iron Mountain R. Co. *v.* Dies, 98 Tenn. 655, 41 S. W. 860; Starnes *v.* Albion Mfg. Co., 147 N. C. 556, 61 S. E. 525; Lenahan *v.* Pittston Coal Co., 218 Pa. St. 311, 67 Atl. 642.

[3] Rolin *v.* Reynold's Tobacco Co., 141 N. C. 300, 53 S. E. 891; Third Vein Coal Co. *v.* Dielie, *supra*.

practical matter such statutes will not abolish the abuses aimed at, if ignorance of the child's age is allowed as a defense. To hold employers liable, though they have used due care, may seem a harsh rule.[4] But since it is necessary for the enforcement of a statute obviously intended to protect society against child-labor abuses thought to threaten its welfare, such a harsh liability seems within the legislative purpose.[5] Furthermore, under such a statute contributory negligence should be no bar.[6] The very purpose of the statute is to keep children out of places where their own heedlessness and inexperience will cause them harm. Since the enforcement of civil liability is merely a means of conserving the interests of society, a recovery should be allowed despite the contributory negligence of the particular plaintiff.[7] Similar reasons require that such plaintiffs be not barred because they asked for employment.[8] In a word, it seems clear that, to be consistent with the legislative purpose, the cause of action must be an absolute one, allowing recovery in every case of damage resulting from the forbidden act; not merely an action like that of negligence, resulting from a legislative extension of the standard of due care.

But in the principal case recovery was allowed where the plaintiff misrepresented his age. In support of this result, the same social interest which makes mine owners liable though ignorant of the infant's age, and which does away with the defense of contributory negligence, might be invoked. But if allowed there seems nothing to prevent a recovery of the same amount of damages by the defendant, in an action of deceit.[9] The plaintiff would, therefore, be barred by circuity, unless the statute could be construed to preclude impliedly the action of deceit on the ground that otherwise the statute would be to a great extent nullified.[10]

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[4] Employers can readily adapt themselves to such a rule by requiring proof and refusing doubtful cases.

[5] *Cf.* McCutcheon *v.* The People, 69 Ill. 601. Tatum *v.* The State, 63 Ala. 151, may be distinguished because in that case the statute punished for selling liquor to persons of known intemperate habits. The interest of society in the result of a civil suit influenced the decisions in the following cases. See Monteith *v.* Kokomo Wood Enameling Co., 159 Ind. 149, 154, 64 N. E. 610, 611; Inland Steel Co. *v.* Yedinak, 172 Ind. 423, 438, 87 N. E. 229, 236; American Car Co. *v.* Armentraut, 214 Ill. 509, 514, 73 N. E. 766, 768.

[6] See 2 AMES & SMITH, CASES ON TORTS, 242, n. 1; 25 HARV. L. REV. 463.

[7] American Car Co. *v.* Armentraut, *supra*; Inland Steel Co. *v.* Yedinak, *supra*; Lenahan *v.* Pittston Coal Co., *supra*. *Contra*, Berdos *v.* Tremont & Suffolk Mills, 209 Mass. 489, 95 N. E. 876; Rolin *v.* Reynold's Tobacco Co., *supra*.

[8] Berdos *v.* Tremont & Suffolk Mills, *supra*. *Cf.* Regina *v.* Tyrrell (1894), 1 Q. B. 710; Commonwealth *v.* Willard, 22 Pick. (Mass.) 476.

[9] The only doubt is whether the deceit would be considered legal cause of the damage suffered by the employer, since it merely led him to put himself into a situation where he would be liable if an accident occurred. But where there is moral obliquity, more remote causes will be deemed legal cause. 1 STREET, FOUNDATIONS OF LEGAL LIABILITY, 111. The conclusion that deceit is legal cause would, therefore, follow *a fortiori* from such a case as Fine *v.* Interurban Ry. Co., 45 N. Y. Misc. 587, 91 N. Y. Supp. 43.

[10] The reasoning of the cases in accord with the Alabama case indicates a leaning toward such a result, but no mention is made of circuity. Braasch *v.* Michigan Stove Co., 153 Mich. 652, 118 N. W. 366; American Car Co. *v.* Armentraut, *supra*; Inland Steel Co. *v.* Yedinak, *supra*. The theory on which some courts refuse to allow recovery for deceit against an infant, who misrepresents his age in order to secure a contract, is somewhat analogous. WILLISTON, WALD'S POLLOCK ON CONTRACTS, 82, n. 26, 27.

Although the legislature's purpose may be examined to determine the character of a cause of action expressly created, yet a wholly dissimilar common-law cause of action can scarcely be destroyed by any construction of the statute.[11] To protect fully the interests of society, a statute providing against this difficulty should be passed.

THE RULE AGAINST PERPETUITIES AND POWERS. — The writer of a note in the Law Quarterly Review for January[1] on the case of *In re de Sommery*[2] seems to have imagined that Parker, J., made a serious mistake in stating that a special power so limited that it may be exercised at a time beyond lives in being and twenty-one years afterwards is absolutely void. The rule is stated in substantially these words by Mr. Gray[3] and Mr. Marsden.[4] The language of the learned judge was "A special power which, according to the true construction of the instrument creating it, is capable of being exercised beyond lives in being and twenty-one years afterwards, is, by reason of the rule against perpetuities, absolutely void; but if it can only be exercised within the period allowed by the rule, it is a good power, even although some particular exercise of it might be void because of the rule." The writer of the note sets out the first part of this sentence, down to the semicolon, and then quotes from the judgment of Lord Cairns in Slark *v.* Dakyns,[5] where, in speaking of a power given to a daughter, he says, "It does not follow that because the original power might have been badly exercised, yet, if it is so exercised as not to infringe the rule, the possibility of its being exercised in another way would make the power void," which is exactly what Parker, J., says in the last part of the same sentence. The note also refers to Lord St. Leonards, and says that "he too thought that a power was not invalid if it could be exercised, although not necessarily so, within the limits of the rule against perpetuities." But Lord St. Leonards does not use language of this kind at the pages referred to,[6] and he only says that a power may be given to a person *in esse* to appoint to grandchildren or remoter issue, and, if he only appoint to such as are living at his death, it will be good. Lord St. Leonards, like Lord Cairns, is speaking of a power given to a living person, which, as Parker, J., says, "must, of course, if exercised at all, be executed during his life, and is therefore valid." The statements of both of them go only to the point that the power is not bad merely because its terms would permit an appointment to objects that are too remote, which is now a familiar rule.[7]

[11] If, instead of looking at the statute for express authority, a court proceeded on the theory that it was in substance carrying out at common law a policy declared by the legislature, the question would be more open to doubt. But even then, it is submitted, the abolishing of a common-law cause of action in a particular circumstance is a type of judicial legislation not warranted by authority. See 26 HARV. L. REV. 531.

[1] 29 LAW QUARTERLY REVIEW, 13.
[2] [1912] 2 Ch. 622.
[3] GRAY, RULE AGAINST PERPETUITIES, 2 ed., §§ 473, 475.
[4] MARSDEN, PERPETUITIES, 239.
[5] L. R. 10 Ch. 39.
[6] SUGDEN, POWERS, 8 ed., 152, 397.
[7] GRAY, RULE AGAINST PERPETUITIES, 2 ed., §§ 473, 510; MARSDEN, PERPETUITIES, 236.